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**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------------|---|--------------|
| BOARHEAD FARM AGREEMENT GROUP, | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 02-3830 |
| | : | |
| ADVANCED ENVIRONMENTAL | : | |
| TECHNOLOGY CORPORATION, ET. AL. | : | |
| | : | |
| Defendants. | : | |

ANSWER TO COMPLAINT BY NRM INVESTMENT COMPANY

Defense to Allegations

Defendant NRM Investment Company admits the allegations contained in paragraphs 13-15, 17-19, 26, 28, 102, 143 (admits only that plaintiff incorporates), 151, 153 (admits only that plaintiff incorporates), 154, 156 (admits only that plaintiff incorporates), 157 and 164. Answering Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4-9, 16, 20-24, 30-97, 103-142, 147-150, and 161, or that they are not applicable

to the Answering Defendant. Answering Defendant avers that paragraphs 2-3, 10-12, 25, 27 are or contain conclusions of law to which no answer is required. Answering Defendant denies each and every other allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

NRM Investment Company (hereafter called “Answering Defendant”) without admitting any liability, hereby asserts the following defenses:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state claims against Answering Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The claims set forth in the Complaint are barred, in whole or in part, by the statutes of limitation applicable to each claim.

THIRD AFFIRMATIVE DEFENSE

Assuming arguendo, but without admission, that Plaintiff incurred response costs consistent with the National Contingency Plan and Spill Act, Answering Defendant is not responsible for any unreasonable costs incurred for the remedial actions taken at the Site.

FOURTH AFFIRMATIVE DEFENSE

The claims set forth in the Complaint are barred, in whole or in part, by the equitable doctrines of estoppel and waiver.

FIFTH AFFIRMATIVE DEFENSE

Because the harm, if any, is divisible and there is a reasonable basis for dividing the harm, joint and several liability may not be imposed.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover costs, damages, or other relief for hazardous substances for which Answering Defendant did not make treatment or disposal arrangements or which it did not transport.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a cause of action under CERCLA insofar as the costs that have been incurred by Plaintiff or that will be incurred by Plaintiff: (a) are not response costs within the meaning of CERCLA or the Spill Act or; (b) are not response costs that are consistent with the National Contingency Plan.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Answering Defendant are barred, in whole or in part, by the equitable doctrine of laches because the Plaintiff's Complaint was instituted in an untimely fashion.

NINTH AFFIRMATIVE DEFENSE

The acts and omissions of persons other than Answering Defendant, over whom Answering Defendant had no control, were intervening or supervening causes of the injuries, costs and damages allegedly incurred by Plaintiff. Further, Answering Defendant is not liable since the alleged releases or threats of release of a hazardous substance and the damages allegedly resulting therefrom were solely acts or omissions of third parties other than employees or agents of the answering Defendant..

TENTH AFFIRMATIVE DEFENSE

Upon information and belief, the acts or omissions of Answering Defendant, if any, did not proximately cause any of the response costs or damages of which Plaintiff now complains; therefore no liability exists on the part of Answering Defendant for any such response costs or damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join a party necessary to complete an equitable adjudication of its claims.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint in this matter fails to set forth with sufficient particularity the nature of alleged damages and response costs suffered by Plaintiff, the date and circumstances in which such damages and response

costs first manifested themselves, and the manner in which conduct of Answering Defendant allegedly caused such damages and response costs.

THIRTEENTH AFFIRMATIVE DEFENSE

Assuming arguendo, but without admission that any hazardous substance for which Answering Defendant may be liable was treated or disposed of at the Site, such are not present in and have not contributed to any release or threat of release at the Site.

FOURTEENTH AFFIRMATIVE DEFENSE

Without admission that Plaintiff is entitled to any recovery, any such recovery is barred by or must be apportioned under the doctrines of contributory or comparative fault or negligence.

FIFTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff is not entitled to recover from Answering Defendant more than Answering Defendant's fair, equitable, and proportionate share, if any, of the costs and damages sought by Plaintiff or to otherwise recover from Answering Defendant more than the amount of such relief, if any, for which Answering Defendant is liable.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred insofar as Answering Defendant did not transport to or arrange for disposal at Boarhead ("the Site") substances that may be classified as "hazardous" under CERCLA or the Spill Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred or limited because (1) Answering Defendant exercised due care in transporting any substances that might have been disposed of at the Site; (2) all conditions, injuries, costs, damages and expenses for which Plaintiff seeks to hold Answering Defendant liable were caused solely by the acts or omissions of third parties other than (a) employees or agents of Answering Defendant or (b) persons whose acts or omissions occurred in connection with a contractual relationship, existing directly or indirectly, with Answering Defendant; and (3) Answering Defendant took precautions against foreseeable acts and omissions of any such third party and the consequences that foreseeably could result from such acts and omissions.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff cannot recover from Answering Defendant more than Answering Defendant's fair, equitable and proportionate share of the costs, damages, expenses, and other relief sought by it.

NINETEENTH AFFIRMATIVE DEFENSE

The Plaintiff may not recover from Answering Defendant any amounts that exceed the portion of costs or damages sought that are attributable to any release or threat of release of any hazardous substance allegedly disposed by Answering Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

Answering Defendant is entitled to an offset against any liability on its part, if any, for the greatest of (1) any amounts actually paid by any person or entity heretofore or hereafter for any of the injuries, cost, damages and expenses alleged in the Plaintiff's Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity heretofore or hereafter for any of the injuries, costs, damages and expenses alleged in the Plaintiff's Complaint; or (3) the equitable share of the liability of any person or entity that heretofore has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the Plaintiff's Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The United States Constitution and applicable state law prevent the retroactive imposition of liability, joint and several or otherwise, for acts and omissions of Answering Defendant that were in compliance with applicable federal, state and local laws and regulations in effect at the time such acts and omission occurred.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Plaintiff has no legal or equitable basis for seeking to impose joint and several liability upon Answering Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The volume and toxicity of any substance that might have been disposed by Answering Defendant to the Site are de minimis -- both in absolute terms and relative to the contributions of other responsible parties -- and therefore insufficient, as a matter of law and pursuant to the de minimis non curat lex doctrine, to give rise to any liability of Answering Defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The United States' claims are barred or limited insofar as they seek to recover costs, damages, expenses and any other type of relief incurred before the effective date of CERCLA on December 11, 1980.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Answering Defendant incorporates by reference all other applicable defenses set forth in the answers of the other answering defendants to the Plaintiff's Complaint and, further, will rely upon all defenses which become available during discovery or trial.

WHEREFORE, Answering Defendant prays that the Complaint be dismissed with prejudice, that costs be awarded against the Plaintiff, and that Answering Defendant be granted such other and further relief as the Court may deem just and proper.

COUNTERCLAIM OF NRM INVESTMENT COMPANY
AGAINST PLAINTIFF AND ITS INDIVIDUAL MEMBERS

1. This counterclaim against the Boarhead Farm Agreement Group and each of its individual members (collectively referred to as “Plaintiff” for the purpose of this counterclaim) arise out of the same transaction or occurrence on which the Plaintiff’s Complaint is based. The court’s jurisdiction over these counterclaims is based on 42 U.S.C. §§ 9607 and 9613(b); 28 U.S.C. § 1331; and Rule 13 of the Federal Rules of Civil Procedure.

2. NRM Investment Company has contributed to the cleanup expenses for OU 1 more than its share of the liability relative thereto and by contract is entitled to a reallocation in its favor.

3. NRM Investment Company hereby asserts all equitable, common law, and statutory contribution and indemnity claims against Plaintiff.

WHEREFORE, NRM Investment Company respectfully requests the Court to enter judgment in its favor and against the Plaintiff on this counterclaim for contribution or indemnity, together with its costs of suit, including reasonable attorneys fees and such other relief as the Court deems appropriate.

ANSWER TO ALL CROSSCLAIMS

Answering Defendant, by way of answer to each and every crossclaim which is or shall be made against it in the within action denies each and every allegation set forth therein.

Respectfully submitted,

DATED: July 15, 2004

Edward Fackenthal
Attorney for NRM Investment
Company

CERTIFICATE OF SERVICE

I, Edward Fackenthal, hereby certify that on this day a copy of
Answering Defendant, NRM Investment Company's foregoing Answer to
the Third Amended Complaint, Affirmative Defenses and Counterclaim was
sent by first class mail and e-mail to each of the following:

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Dated: July 15, 2004